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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/992,271      | 11/16/2001  | Kimberly Ann Mudar   | D-43397-02          | 7690             |

7590

02/07/2006

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| EXAMINER |
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WEINSTEIN, STEVEN L

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| ART UNIT | PAPER NUMBER |
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1761

DATE MAILED: 02/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/992,271

Applicant(s)

MUDAR ET AL.

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 22-32 is/are pending in the application.  
4a) Of the above claim(s) 12 and 24 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-11, 13-20, 22, 23 and 25-32 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11, 13-20, 22, 23, and 25-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luthra et al (WO '250) in view of Noel et al ('287) or Noel et al in view of Luthra et al, essentially for the reasons given in the Office actions mailed 3/29/04 and 7/12/05.

Claim 1 now recites the food product is meat. The previous Office actions referred to above, addressed the fact the product was meat. Claim 1 also now recites that atmosphere has been evacuated from between the meat product and the packaging article. Note that the claim only recites "with atmosphere having been evacuated...". Thus, the claim is silent as to what degree atmosphere has been evacuated. As noted previously, Luther et al discloses shrink film packaging as well as vacuum skin packaging, which will create conditions wherein atmosphere has been evacuated. The claims are also rejected employing Noel et al as the primary reference. In this rejection, Noel et al discloses a packaged meat product having added liquid thereon, wherein the added liquid is brine, a packaging article surrounds the meat product and the added liquid, atmosphere has been evacuated from between the meat product and the packaging, and the packaging article has a slip agent. Claim 1 recites that the seal layer comprises a slip agent. Noel et al appears to be silent as to where in the packaging article the slip agent is present. However, Luthra et al indicates that anti-

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fogging agents and slip agents are generally associated with the innermost, seal layer. Note, too, that even if this was not the case, Luthra et al indicates that these agents permeate through the layers and thus would be present in the seal layer even if it was not initially, intentionally associated with the seal layer. Therefore, it would have been obvious to modify Noel et al and associate the slip agent in the seal layer, if indeed it is not inherently associated with the seal layer by permeation. In regard to the dependent claims, Luthra et al can be relied on for the reasons given previously to teach the quantity of the slip agent, the particular slip agent and the various recited properties would all have been obvious. In regard to new claims 28-32, the particular conventional slip agent and antiblocking agent are seen to have been an obvious matter of routine determination.

All of applicants' remarks filed 11/17/05 have been fully and carefully considered but are not found to be convincing. It is urged that it is more difficult to seal through an added liquid containing brine than to seal through the same type of product having no added liquid. There is no probative evidence on the record to support this assertion. However, even if such data was presented, the degree of difficulty is not seen to be the issue. It is notoriously well known in the art that a seal area that is contaminated with contaminants will not be sealed as securely as a seal area that does not have contaminants present. As pointed out previously, it is, at best, a matter of degree. Also, meat can have as wet or wetter surfaces than meat that has been minimally injected. Chicken, for example, as well as various meats, inherently have very wet and drippy surfaces that contain the gamut of compounds including salt. The problem is not being

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questioned. Rather, the problem would inherently be broader than what has been disclosed. At the bottom of page 10, it is inaccurately stated that the Office action acknowledges that Luthra et al does not teach a heat seal layer including a slip agent for moist products such as meat. The Office actions are based on the fact that Luthra et al teaches moist meat. What Luthra is silent on is whether the meat has had an "added" liquid, which recitation has been treated in the previous actions. On page 11 of the remarks it is urged that Luthra et al is concerned with antifogging and not "preservation". This statement is in response to a statement made in the Office action mailed 7/12/05. However, the Office action statement was not intended to mean that the Luthra et al teaches the agent has preservative properties. Rather, the point being made in the Office action was that since Luthra et al was directed to a packaging for moist foods which packaging reduced fogging, it would have been obvious to modify Luthra et al and substitute one conventional moist food for another conventional moist food not only for the preservation effect of having a moist food in a packaging per se (rather than loose), but also because of the antifogging issue. In regard to the urging that fogging would not be a problem in the claimed package because of the vacuum, this urging is directed to limitations not found in the claims. As noted above, claim 1 is silent as to how much atmosphere is eliminated. The claims do not recite that the product is directly against the meat. Note, too, that Luthra et al teaches shrink packaging, so that fogging would still be an issue in a reduced atmosphere package, and one can even have minimal contact in a vacuum package if, for example, a product is placed in a tray and the tray is enclosed in a bag. In regard to the urging on page 12 of the remarks that one

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would not have known that the presence of the slip agent would have been beneficial for sealing through the contamination left from a meat product with added liquid comprising brine, it is not necessary in combining references to teach every advantage of the combination. That is, the art taken as a whole fairly teaches that the packaging of Luthra et al would be applicable for any conventional moist food, and beside the general preservative effect of bagging the food, the package would inhibit fogging. This is sufficient for a proper 35USC103 rejection. Finally, in further response to the urging that one would not have known of the slip agent effect on sealing, why then does Luthra et al teach that the use of the film results in a very low percentage of packages having defective seals? At the minimum, Luthra et al teaches that the film as a whole reduces defective seals for moist foods including meats. If the film reduces seal defects in moist foods it is evidence that it would inherently reduce seal defects to some degree in moist foods wherein the moisture is from an external source.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday from 7:00AM to 2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Steve Weinstein  
**STEVE WEINSTEIN** 1761  
**PRIMARY EXAMINER**  
2/6/06